

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,)	
)	
vs.)	No. 3:03-CR-0078-N (01)
)	
ANDRE LYNN FORD, ID # 29802-177,)	
Defendant.)	Referred to U.S. Magistrate Judge

FINDINGS, CONCLUSIONS, AND RECOMMENDATION

Pursuant to the provisions of 28 U.S.C. § 636(b), and the *Order of Reference* dated August 6, 2009, this action has been referred for determination of whether the Court should extend defendant's time for filing an appeal under Fed. R. App. P. 4(b)(4).

I. BACKGROUND

On January 22, 2008, the Court entered an order reducing the defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2). On February 12, 2009, the Court received his pro se notice of appeal of that order and transmitted it to the Fifth Circuit Court of Appeals. After concluding that the defendant filed his notice of appeal on February 12, 2009, seven days after it was due, the Fifth Circuit Court of Appeals remanded the appeal on April 29, 2009, "for a determination whether the untimely filing of the notice of appeal was due to excusable neglect or good cause."

In response to a questionnaire, the defendant averred that he placed his Notice of Appeal in the prison mail system with correct postage on January 28, 2009, and expected it to be mailed the next day.¹ He also claimed that any delay in mailing was due to neglect on the part of the institution. To the extent the defendant's notice of appeal was untimely filed, the Court should find good cause to grant him additional time because he promptly drafted his appeal and gave it to prison authorities

¹ Rule 4(c) of the Federal Rules of Appellate Procedure creates a prison mailbox rule for notices of appeal filed in either civil or criminal cases. Under that rule, "the notice is timely if it is deposited in the institution's mail system on or before the last day for filing."

with sufficient postage for mailing. *See* Fed. R. App. P. 4(b)(4).

II. RECOMMENDATION

The Court should find good cause to grant the defendant an extension of time under Fed. R. App. P. 4(b)(4) to file his February 12, 2009 notice of appeal. Because the granting of such additional time makes his appeal timely, the Court should notify the Fifth Circuit Court of Appeals of its finding and resulting extension of time and return the case for further proceedings as may be appropriate.

SIGNED this 24th day of August, 2009.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of these findings, conclusions and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions and recommendation must file specific written objections within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE